

OVERVIEW OF RERA - CA'S PERSPECTIVE



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What is RERA & it's Objective

The Real Estate (Regulation & Development) Act 2016 (hereinafter referred to as "RERA") is Act of Parliament, enacted to regulate and promote the real estate sector in an efficient and transparent manner. Rule making powers are vested with the respective State Government and Regulations are made by Authority setup under the Rules of respective State Governments. For Union Territories, powers are allocated as per Section 2(g) of the Act.

Real estate has remained a sector with significance, not only for the employment generation and role in the economy but also because of the fact that even small projects have investments, returns and transactions in millions and crores. We have experienced the approach of revenue during the Sales Tax & Service Tax regime. Stamp Duties generated from real estate deals have also remained a key source of revenue for the State. Hence it has always remained favorite for all. However, lack of effective Regulation has encouraged a number of malpractices and fraudulent activities resulting in losses to homebuyers. In order to protect the interest of homebuyers and put a cap on malpractices, the law was enacted in March 2016 and fully operational from May 2017.

Section 1 & 2	Enactment & Definition
Section 3 to 19	Operational aspects - Registration, Duties/ Responsibilities of Promoter/ allottee, etc
Section 20 to 40	Regulatory aspects - Establishment, Formation, Combination, Functions, Powers, etc of Authority
Section 41 to 42	Formation and Function of Central Advisory Council
Section 43 to 58	Real Estate Tribunal - Establishment, Formation, Combination, Functions, Powers, etc
Section 59 to 72	Offences, Penalties & Adjudication
Section 73 to 92	Administrative & Miscellaneous Provisions

Key aspects of the Law

Certain key aspects of the law enacted for the effectiveness are as follows

1. Establishment of Regulator

One of the important features of this law is establishment of Regulator (i.e. Authority) by the respective State Governments. States also have powers to make Rules and General Administration of Law. Authority shall have power to make recommendation to State Governments, Entertain Complaints, call for information and conduct investigation (on Complaint or suo moto), issue interim orders, issue direction to promoters/allottee/agents, impose interest/penalty, Perform Functions listed u/s. 34 of the Act, etc. In a way Authority is an executor of the various aspects of the law. It is a Driving force of the law. MahaRERA has till date issued a number of circulars, orders, clarifications, etc. It has also taken a lot of initiatives for the strict compliance, development of the sector, complaint handling, blacklisting promoters, declaring lapsed projects, providing solutions to the practical issues of promoters, etc. Though there is a flip side too, but advantages are certainly blessings for many

2. Registration of Projects, Agents

Real Estate Developers/Builders (hereinafter referred to as “Promoter”) are required to take a lot of approvals from various authorities before/during project development. Most of the approvals are from planned development and resources availability perspective, given by various local authorities. RERA also requires promoters to register their Project with the Authority. Registration under this Act is an additional approval which is required to be taken before advertising/ marketing/selling/booking. This move is more towards providing project information on plate before the customer makes his buying decision. Law has prescribed certain eligibility criteria for mandatory registration of projects (Section 3). Law has also broadly prescribed information to be forwarded while making application for Registration of Project. Information includes Details of Promoters& Past projects, Actual Approvals related to Projects, Title Certificate, Encumbrances, Litigations, Project Features Certified by Project Professionals, Project Cost Certified by CA, Proforma of Sale Agreement/ Allotment Letter (Including deviation from model agreement/allotment letters), etc. Promoter is also required to commit the date of completion of Project in an Affidavit. Every application for Registration is scrutinised before approval within a reasonable period of time.

The registration of the project does not give assurity as to correctness and completeness of the information. However, it is a ready source of information for Customers bringing some responsibility amongst promoters. MahaRERA has of late brought a reasonable amount of strictness in issuing Registration Certificates. The kind of Scrutiny of applications and documents sought have improved to a good extent. This certainly helps keeping check on Projects right from the date of application of registration. As per information available in public domain, there are 36,869 projects in the state of Maharashtra. Agents are also required to get themselves registered with the information.

3. Duties & Responsibilities of Promoter

Law has imposed certain Responsibility on Promoters. Some of those are

- a. Restriction on Advertisement, Sale, Booking, etc before RERA registration
- b. RERA Registration and Providing Project information online

- c. Update RERA with Project progress in the form of Bookings, Cost Incurred, Completion Stage, Approvals, on side development, etc
- d. Maintain Separate Bank Account for collection from Customers and maintain financial discipline to have control over withdrawal from the said Bank Account. (70% of amount realised to be withdrawn to cover project land and construction cost)
- e. Obtain Annual Audit Reports
- f. Provide timely possessions & fulfilling commitments of agreement to sale
- g. Formation of Society
- h. Execute Conveyance
- i. Responsibility for false or incorrect statement/ advertisement, etc
- j. Not to accept more than 10% of agreement amount before registration of agreement
- k. Take Consent to allottee before change in Sanctioned Plans/Layout Plans, etc
- l. Restriction on transfer or assign project
- m. Obtain Title and Construction insurance
- n. Right to file complaint, appeal, etc

Rules & Regulations under the Act further adds certain specific requirements to be complied with by Promoters.

4. Duties & Responsibilities of buyer (allottee)

- a. Allottee under the Act has right to be informed about fundamental documents and progress of the project
- b. Allottee is entitled to claim possession of the Unit as per the terms of agreement. In case of delay, he is entitled to interest/refund of the amount paid
- c. Allottee has right to file complaint, appeal, adjudicate for compensation, etc
- d. Allottee is duty bound to make timely payment, compensate promoter with interest in case of delay, take possession within 2 months of occupation, participate in formation of society/obtaining conveyance

5. Litigation (Complaint, Adjudication, Appeal, etc)

- a. Separate Grievance redressal is a unique feature and much more required function of this law.
- b. MahaRERA has, apart from handling Complaint and Adjudication proceedings, encouraged Conciliation proceedings wherein more than 45 benches are set up for amicable settlement of the disputes. Entire functioning of the said benches is undertaken within the framework of the policies designed by MahaRERA
- c. Certainly, Complaint and Conciliation proceedings at MahaRERA has resulted into speedy mode of dispute resolution because of the online mode of hearing, limited paper documents and following its own procedures

As per the information available in public domain, out of 18,232 Complaints received to MahaRERA 12,317 (68%) of Complaints are disposed off by MahaRERA till 5th July 2022

In the previous paragraphs I have tried to highlight important aspects of the law in a concise manner. However, in order to get a hold of the subject matter, it is important to get deep into it. It's just a 5 years old baby, hence it's not 100% perfect and matured. It's still evolving and there are many questions to be answered, either by regulators or legislators or courts.

Scope for CAs

Like many other Laws in which CA's are practicing, RERA is also one of the laws with blend of financial cum legal expertise. Hence, it is full of opportunity for the Chartered Accountants. Some of the areas identified by me for the practicing CA's are as follows

1. **Planning & Educating** : Proper Planning and Educating Promoters about requirements of Law is of utmost importance. Penalties under the law are very stringent and maintaining financial discipline also requires expert's acumen. Basic Skills of a Chartered Accountant blend with specialised knowledge of the Law, enabling identifying problems in advance and bringing solutions at the beginning of the project. This reduces hassles subsequently while executing the project.
2. **Registration, Extension & Compliance** : Fulfilling basic Compliance requirement of RERA is also matter of great importance. End of the day the majority of the disclosures made are part of the Public domain. Also, the Complexity of the project, involvement of project stakeholders/promoters, etc requires expert assistance not only to provide solutions but also to identify the problems at the first instance.
3. **Certifications** : This is the pure domain of Chartered Accountants. However, Certification Requirements of MahaRERA are too Complex. One has to understand the various requirements of the Certificate/Law/Rules, etc and undertake assignments within the Framework of Standards and Guidance Notes issued by the ICAI.
4. **Litigation** : Chartered Accountants are authorised to appear before Authority, Adjudicating Officer and also Tribunal for representing matter. Hence it is one more practicing opportunity for CAs
5. **360 degree view** : Stand taken in RERA or disclosures/ Certificates issued under RERA has implication in Presentation of Financials, GST & Income Tax matters. Having a holistic approach is always good for the financial health of the organisation. Chartered Accountant with 360 degree knowledge can alien requirements under all the laws and execute desired operations accordingly
6. **Real Estate CFO** : Real Estate in itself is Complex subject from Tax, Finance and Legal perspective. It requires specialised knowledge and skills to understand industry specific issues and their implications. Cash flow requirements of the RERA adds to more complexity. It certainly requires professionals to handle the finance function of an organisation. A Chartered Accountant in CFO position gives balance to any project finances. Hence there is a lot in store for Chartered Accountants over here
7. **Specialised Project handling**: Stalled Projects, Due Diligence, Deal Analysis, etc are certain important aspects which a Chartered Accountant can undertake with its knowledge of RERA and allied laws. Getting a complete package at one stop is very difficult in the market. Hence the specialized knowledge of industry along with different subject matter expertise gives a good stage to handle complex projects.

8. For Homebuyers : It's a Consumer Protection law, awareness amongst homebuyers is still rare. Though project information is in public domain, understanding of various documents and issues surrounding them is lacking. Chartered Accountant can help homebuyers in understanding various aspect of project and help make buying decision

Approach

Any new practicing area requires effort to learn and remain stable in its evolving time. There are many finer things in the subject. In Depth Study of the matter and handling practical cases gives confidence and readiness to deal with any situation. RERA is not an exception to this rule. One needs to stick to the basic and keep on enhancing knowledge in this Domain. Though there is very limited study material available for the reference, the knowledge acquired during the practical experience plays an important role. Making own checklists/notes, analysing orders/judgment of courts, understanding views of different professionals, accessing information available in public domain, getting an idea as to how the regulator thinks/behaves, understanding object and functioning of authority, etc are some of the important points one has to work upon. Merely looking at it (RERA) as a Certification Assignment is a big loss of opportunity. CAs can add value to clients on the core domain of the act too. Though it's Challenging, the result looks satisfactory.

"If it doesn't challenge you, it won't change you"

